

(3) A copy of the most recent published report of condition of the Mortgage Trustee; and

(4) A list of the Fishing Vessels, Fish Processing Vessels, and Fish Tender Vessels and the respective lenders for which it is acting as Mortgage Trustee.

(b) The Mortgage Trustee must file the documents required in paragraph (a) of this section within 30 calendar days of the annual stockholder's meeting of the Mortgage Trustee, or if no annual meeting is held, then the filing must be within 30 calendar days prior to the anniversary date of the original Affidavit of U.S. Citizenship filed with MARAD.

(c) If at any time the Mortgage Trustee fails to meet the statutory requirements set forth in the AFA, the Mortgage Trustee must notify the Citizenship Approval Officer of such failure to qualify as a Mortgage Trustee not later than 20 calendar days after the event causing such failure. We will publish in the FEDERAL REGISTER a disapproval notice and will so notify the U.S. Coast Guard and the Mortgage Trustee of such disapproval by providing them a copy of the disapproval notice. Within thirty 30 calendar days of such publication in the FEDERAL REGISTER, the disapproved Mortgage Trustee must transfer its fiduciary responsibilities to a successor Mortgage Trustee, approved by the Citizenship Approval Officer. The preferred status of the mortgage will be maintained during the 30 day period following publication of the disapproval notice in the FEDERAL REGISTER pending transfer of the Mortgage Trustee's fiduciary responsibilities to a successor Mortgage Trustee.

**§ 356.37 Operation of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel by a Mortgage Trustee.**

An approved Mortgage Trustee cannot operate a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel without the approval of the Citizenship Approval Officer, except where non-commercial operation is necessary for the immediate safety of the vessel and the vessel is operated under the command of a Citizen of the United States for a period of no more than 15 calendar days.

**Subpart F—Charters, Management Agreements and Exclusive or Long-Term Contracts**

**§ 356.39 Charters.**

(a) Charters to Citizens of the United States:

(1) Bareboat charters may be entered into with Citizens of the United States subject to approval by the Citizenship Approval Officer that the charterer is a Citizen of the United States. The bareboat charterer of Fishing Vessels, Fish Processing Vessels, or Fish Tender Vessels must submit an Affidavit of U.S. Citizenship to the Citizenship Approval Officer for review and approval prior to entering into such charter.

(2) Time charters, voyage charters and other charter arrangements that do not constitute a bareboat charter of the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel may be entered into with Citizens of the United States. The charterer must submit an Affidavit of U.S. Citizenship to the Citizenship Approval Officer within 30 calendar days of execution of the charter.

(b) Charters to Non-Citizens:

(1) Bareboat or demise charters to Non-Citizens of Fishing Vessels, Fish Processing Vessels, or Fish Tender Vessels for use in the United States are prohibited. Bareboat charters to Non-Citizens of Fish Processing Vessels and Fish Tender Vessels for use solely outside of the United States are permitted.

(2) Time charters, voyage charters and other charters that are not a demise of the vessel may be entered into with Non-Citizens for the charter of dedicated Fish Tender Vessels and Fish Processing Vessels that are not engaged in the Harvesting of fish or fishery resources. A copy of the charter must be submitted to the Citizenship Approval Officer prior to being executed in order for the Citizenship Approval officer to verify that the charter is not in fact a demise of the vessel.

(3) Time charters, voyage charters and other charters of Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessels to Non-Citizens are prohibited if the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel will be

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used to Harvest fish or fishery resources.

(c) We reserve the right to request a copy of any time charter, voyage charter, contract of affreightment or other Charter of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel in order to confirm that the Charter is not a bareboat charter of the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel.

(d) Any violation of this section will render the vessel's fishery endorsement immediately invalid upon notification from the Citizenship Approval Officer.

#### § 356.41 Management agreements.

(a) An owner or bareboat charterer of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel may enter into a management agreement with a Non-Citizen in which the management company provides marketing services, consulting services or other services that are ministerial in nature and do not convey control of the vessel to the Non-Citizen.

(b) An owner or bareboat charterer of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel may not enter into a management agreement that allows the Non-Citizen to appoint, discipline or replace the crew or the master, direct the operations of the vessel or to otherwise effectively gain control over the management and operation of the vessel or vessel-owning entity.

(c) The owner or bareboat charterer must file with the Citizenship Approval Officer a description of any management agreement entered into with a Non-Citizen. The description must be submitted within 30 days of the execution and must include:

(1) A description of the agreement with a summary of the terms and conditions, and,

(2) A representation and warranty that the agreement does not contain any provisions that convey control over the vessel or vessel-owning entity to a Non-Citizen.

(d) The Citizenship Approval Officer may request a copy of any management agreement to determine if it contains provisions that convey control over the vessel or vessel-owning entity to a Non-Citizen.

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#### § 356.43 Long-term or exclusive sales contracts.

(a) An owner or bareboat charterer of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel may enter into an agreement or contract with a Non-Citizen for the sale of all or a significant portion of its catch where the contract or agreement is solely for the purpose of employment of certain vessels on an exclusive basis for a specified period of time. Such contracts or agreements will not require our prior approval; provided, that the contract or agreement does not convey control over the owner or bareboat charterer of the vessel or the vessel's operation, management and harvesting activities.

(b) Provisions of a long-term or exclusive contract or agreement for the sale of all or a significant portion of a vessel's catch entered into pursuant to paragraph (a) of this section that are not considered to convey impermissible control to a Non-Citizen and do not require our approval include provisions that:

(1) Specify that the owner or bareboat charterer agrees to sell and purchaser agrees to procure, on a preferential basis, a certain quantity of fish caught by a vessel owner or bareboat charterer on a specific vessel;

(2) Specify that the vessel owner or charterer is responsible for supplying a specific type of fish to off-loading points designated by the purchaser;

(3) Provide for the replacement by the vessel owner of vessels covered by the contract or agreement in the event of loss or damage;

(4) Specify refrigeration criteria;

(5) Provide that the owner or bareboat charterer has to comply with fishing schedules that specify the maximum age of fish to be delivered and a method to coordinate delivery to the purchaser;

(6) Provide for methods of calculating price per pound or other price schedules and a schedule for payment for delivered fish;

(7) Provide for an arbitration mechanism in the event of dispute; and

(8) Provide for the purchaser to furnish off-loading crew and/or processing or quality control technicians but no other vessel crew members.